

ASSEMBLY BILL

No. 1665

Introduced by Assembly Member Laird

February 22, 2005

An act to amend Section 10295 of the Public Contract Code, and to amend Section 8551 of, to add Part 6 (commencing with Section 9600) and Part 7 (commencing with Section 9660) to Division 5 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1665, as introduced, Laird. Flooding.

(1) Existing law establishes the 7-member Reclamation Board in the Department of Water Resources (department). Existing law authorizes the Reclamation Board to engage in various flood control activities along the Sacramento River, San Joaquin River, their tributaries, and related areas. Existing law requires the Reclamation Board to establish and enforce standards for the maintenance and operation of, and to undertake other responsibilities with regard to, flood control works under its jurisdiction.

This bill would enact the Central Valley Flood Control Assessment District Act. The bill would change the name of the Reclamation Board to the Central Valley Flood Control Board (board) and would provide for the appointment of members to that board. The bill would create the Central Valley Flood Control Assessment District (district), which would include the area drained by the Sacramento River and the San Joaquin River. The bill would require the board, by regulation, to define the boundaries of the district.

The bill would require the board to develop a flood control subventions program to assist financially, and coordinate the efforts of, local districts in discharging specified flood control

responsibilities. The bill would authorize the board to conduct an evaluation of the needs of the various flood control facilities, projects, and plans within the district for supplemental assistance. The bill would authorize the board to enter into agreements with local districts for specific plans of work for which supplemental financial assistance may be provided pursuant to prescribed procedures.

The bill would authorize the board to impose special benefit assessments, fees, or charges upon lands within the district, or any zone established within the district, and would require the revenue generated by the imposition of those assessments, fees, or charges to be deposited in the Central Valley Flood Control Fund, which the bill would establish in the State Treasury. The bill would require the board to expend the money in the fund, upon appropriation, to pay for flood control subventions to local districts, for the assumption of certain maintenance duties by the department, for the payment of judgments or obligations of liability or indemnity, to advance or loan to a local district funds that represent the local nonfederal share of financial cooperation in the construction of a flood control project, for administrative costs, and to carry out a mitigation banking program. The bill would require counties in which lands subject to an assessment, fee, or charge are located, to collect that assessment, fee, or charge on behalf of the district. The bill would authorize those counties to impose a fee to cover their collection costs. The bill would require the board to establish a program of mitigation banking for the benefit of local districts in the discharge of their flood control activities.

By imposing duties on the board, and on counties within which lands may be subject to an assessment, fee, or charge imposed by the board, the bill would impose a state-mandated local program.

The bill would prohibit an insurer from the issuing, delivering, or renewing a policy of residential property insurance in the state unless the named insured is offered coverage for loss or damage from flooding for which the insured is eligible under the National Flood Insurance Act of 1966, as specified.

(2) Existing law requires the Department of General Services to approve certain contracts entered into by a state agency, including contracts for the construction, alteration, improvement, repair, or maintenance of property, or the performance of work or services by the state agency for, or in cooperation with, any person or public body.

This bill would exempt from this requirement a contract entered into by the board or the department that is not funded from state tax revenue.

(3)The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10295 of the Public Contract Code is
2 amended to read:

3 10295. (a) All contracts entered into by any state agency for
4 (1) the acquisition of goods or elementary school textbooks, (2)
5 services, whether or not the services involve the furnishing or use
6 of goods or are performed by an independent contractor, (3) the
7 construction, alteration, improvement, repair, or maintenance of
8 property, real or personal, or (4) the performance of work or
9 services by the state agency for or in cooperation with any
10 person, or public body, are void unless and until approved by the
11 department. Every contract shall be transmitted with all papers,
12 estimates, and recommendations concerning it to the department
13 and, if approved by the department, shall be effective from the
14 date of the approval.

15 (b) This section applies to any state agency that by general or
16 specific statute is expressly or impliedly authorized to enter into
17 transactions referred to in this section.

18 (c) This section does not apply to the following:

19 (1) Any transaction entered into by the Trustees of the
20 California State University, by the Board of Governors of the
21 California Community Colleges, or by a department under the
22 State Contract Act or the California State University Contract
23 Law.

(2) Any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code.

(3) Any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources.

(4) Any contract entered into by the Department of Personnel Administration for state employee benefits, occupational health and safety, training services, or combination thereof.

(5) Any contract let by the Legislature.

(6) Any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(7) Any contract entered into by the Central Valley Flood Control Board or the Department of Water Resources that is not funded from revenue derived from state taxes.

SEC. 2. Section 8551 of the Water Code is amended to read:

8551. ~~The~~ *Subject to Sections 9621 and 9622, the* board consists of seven members who are appointed by and serve at the pleasure of the Governor.

SEC. 3. Part 6 (commencing with Section 9600) is added to Division 5 of the Water Code, to read:

PART 6. THE CENTRAL VALLEY FLOOD CONTROL ASSESSMENT DISTRICT ACT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title

9600. This part shall be known and may be cited as the Central Valley Flood Control Assessment District Act.

Article 2. Definitions

9601. Unless the context otherwise requires, the definitions set forth in this article govern the construction of this part.

1 (a) “Act” means the Central Valley Flood Control Assessment
2 District Act.

3 (b) “Assessment district” means the Central Valley Flood
4 Control Assessment District.

5 (c) “Board” means the Central Valley Flood Control Board.

6 (d) “Flood control” means flood management, drainage
7 control or management, flood fighting, and all other activities,
8 including, but not limited to, construction, improvement,
9 enhancement, operation, maintenance, dredging, reclamation,
10 inspection, regulation, mitigation, planning, and patrolling, for
11 the purpose of lessening the risk and harm from the flooding or
12 drainage of water.

13 (e) “Local district” means a city, county, reclamation district,
14 levee district, county flood control district, or any other local or
15 regional public entity authorized to construct, operate, or
16 maintain flood control works or projects.

17 (f) “Local project cooperation agreement” means an
18 agreement between a local district and the state that provides the
19 promises and assurances of local cooperation from the local
20 district required by Section 12828.

21 (g) “State Water Resources Law of 1945” refers to the State
22 Water Resources Law of 1945 (Chapter 1 (commencing with
23 Section 12570) and Chapter 2 (commencing with Section 12639)
24 of Part 6).

25
26 Article 3. Legislative Findings

27
28 9602. The Legislature hereby finds and declares all of the
29 following:

30 (a) The existing, state-authorized flood control system in the
31 Central Valley is a reasonable plan for the protection of human
32 life, habitation, and property, and its continuation and
33 implementation serve the best interests of the people of
34 California.

35 (b) There is an increasing need for the maintenance and
36 improvement of flood protection projects in the Central Valley to
37 lessen the risk of flooding in light of the growth of population
38 and the aging of the existing flood control system.

39 (c) To meet this need, a valley-wide regional flood control
40 assessment area should be created to support the efforts of local

1 districts in order to ensure the timely accomplishment of all
2 needed operation, maintenance, and improvement of flood
3 control works and the implementation of plans of flood control.
4 This assessment area should be called the Central Valley Flood
5 Control Assessment District.

6 (d) The purpose of the Central Valley Flood Control
7 Assessment District is to provide a stable and reliable source of
8 supplemental funding for local districts to assist those local
9 districts in carrying out their flood control activities.

10 (e) The Legislature recognizes that all lands protected by flood
11 control projects and plans of flood control in the Central Valley
12 derive a common benefit from the existence and successful
13 functioning of those projects and plans and that all lands that
14 contribute to, or exacerbate, flood water runoff and flow share a
15 common responsibility for mitigating those impacts.

16 (f) The boundaries of the Central Valley Flood Control
17 Assessment District should include the entire area benefitted by
18 state-adopted plans of flood control, and all areas contributing to
19 flood control problems, in the Central Valley.

20 (g) It is highly desirable for the Central Valley Flood Control
21 Board, as the assessing authority within the assessment district,
22 to establish a regional system for the banking of credits for
23 environmental mitigation. Banked mitigation credits should be
24 used in connection with the performance of flood control
25 activities within the assessment district to ensure necessary
26 environmental mitigation without delaying the accomplishment
27 of flood control work necessary for public safety.

28 29 Article 4. Legislative Intent 30

31 9603. It is the intent of the Legislature to reaffirm existing
32 state law and legislative policy that the cost to the state of
33 participation in flood control projects shall be limited to the
34 contributions to the costs of construction, including the
35 acquisition of lands, easements, and rights-of-way, specifically
36 and expressly provided for in the State Water Resources Law of
37 1945, and that all other nonfederal costs of, or arising out of, the
38 construction, operation, and maintenance of flood control
39 projects shall continue to be the responsibility of local and

1 regional government as provided in Sections 8370, 12642, and
2 12828.

3 9604. It is the intent of the Legislature that this part and the
4 powers of the board shall be liberally construed to achieve the
5 purposes of this part.

6
7 CHAPTER 2. THE CENTRAL VALLEY FLOOD CONTROL
8 ASSESSMENT DISTRICT
9

10 Article 1. The Central Valley Flood Control Assessment
11 District
12

13 9610. The Central Valley Flood Control Assessment District
14 is hereby created. The assessment district includes the area
15 described in Section 9612, within which the board may levy
16 assessments, fees, and charges for the purposes of this part.

17 9612. The assessment district shall include the entire area
18 drained by the Sacramento River and San Joaquin River,
19 including the drainage of the Tulare Lake Basin. Any public
20 entity only partly within this drainage area shall be deemed to be
21 entirely within the assessment district. The board, by regulation,
22 shall define the boundaries of the assessment district in
23 accordance with this section.

24 9614. The formation of a zone established pursuant to Section
25 9641, or the revision of the boundaries of a zone, is subject to
26 Chapter 8 (commencing with Section 54900) of Part 1 of
27 Division 2 of Title 5 of the Government Code.

28
29 Article 2. The Central Valley Flood Control Board
30

31 9620. The Reclamation Board is hereby renamed the Central
32 Valley Flood Control Board. All references to the Reclamation
33 Board shall be deemed to be references to the Central Valley
34 Flood Control Board.

35 9621. (a) Not later than January 14, 2007, the Governor shall
36 assign an expiration date to each board office in accordance with
37 subdivision (b).

38 (b) The terms of the members of the board shall expire as
39 follows: one term on January 15, 2007, two terms on January 15,

1 2008, two terms on January 15, 2009, and two terms on January
2 15, 2010.

3 (c) If a vacancy occurs in an office prior to the assignment of
4 an expiration date to that office, or prior to the applicable
5 expiration date, the Governor shall immediately fill that vacancy
6 by appointment pursuant to Section 8551 for a term that expires
7 on the applicable assigned expiration date.

8 9622. (a) Upon the expiration of a term pursuant to Section
9 9621, the Governor shall appoint a board member from a list of
10 nominations that is prepared and submitted in accordance with
11 Sections 9623 and 9624.

12 (b) An appointment made pursuant to subdivision (a) or (d)
13 shall be for a term of four years.

14 (c) If a vacancy occurs prior to the end of a four-year term, the
15 Governor shall immediately fill that vacancy by appointing a
16 board member from a list of nominations described in
17 subdivision (a) for the unexpired portion of the term.

18 (d) Upon the expiration of a four-year term, the Governor shall
19 appoint a board member from a list of nominations, as described
20 in subdivision (a).

21 (e) (1) Subject to paragraph (2), there shall be at least one
22 member on the board selected from each subregion established in
23 Section 9623.

24 (2) If a subregion committee does not submit a list in
25 accordance with Section 9624, or if none of the nominees on a
26 subregion's list accept the Governor's appointment, the Governor
27 may use another subregion's list even though that may result in
28 no board member being from the affected subregion.

29 (3) All members shall represent the entire jurisdictional area of
30 the board and not any particular portion thereof.

31 9623. The board of supervisors in each of the following
32 counties in the following three subregions shall select one
33 representative to meet with the representative of the other
34 counties in the designated subregion for the purposes of
35 preparing and submitting a nomination list for the purposes of
36 Section 9622:

37 (a) Sacramento Valley subregion: Counties of Shasta, Tehama,
38 Glenn, Colusa, Yolo, Solano, Contra Costa, Alameda,
39 Sacramento, Sutter, Butte, Yuba, Plumas, Sierra, Nevada, El
40 Dorado, Napa, Lake, Siskiyou, and Modoc.

1 (b) San Joaquin Valley subregion: Counties of Amador, San
2 Joaquin, Stanislaus, Alpine, Calaveras, Tuolumne, Mariposa,
3 Merced, Madera, San Benito, and Fresno.

4 (c) Tulare Lake Basin subregion: Counties of Kings, Tulare,
5 and Kern.

6 9624. (a) Each subregion committee shall submit the names
7 of at least five nominees, with a statement of their qualifications,
8 to the Governor on or before November 15, 2006. Every two
9 years thereafter, the committees shall submit new lists to the
10 Governor on or before November 15 of the second year.

11 (b) The Legislature finds and declares that it is desirable that
12 board members have a background in government, flood control,
13 water resources management, engineering, or any other discipline
14 or profession that would be helpful to their service on the board.

15
16 CHAPTER 3. POWERS AND RESPONSIBILITIES

17
18 Article 1. General Provisions

19
20 9625. The powers and responsibilities of the board prescribed
21 in this part are in addition to the board's existing powers and
22 responsibilities, and nothing in this part diminishes any power or
23 authority granted to the board under existing law.

24
25 Article 2. Central Valley Flood Control Subventions

26
27 9630. The board shall develop a flood control subventions
28 program to supplement financially, and ensure coordination of
29 the efforts of, local districts in discharging their flood control
30 responsibilities under the State Water Resources Law of 1945.

31 9631. The board, from time to time as it deems necessary,
32 shall conduct an evaluation of the needs of the various flood
33 control facilities, projects, and plans within the assessment
34 district for supplemental assistance. The evaluation shall be
35 based upon information the board solicits and receives from local
36 districts, state agencies, including the department and the Office
37 of Emergency Services, and the federal government, including
38 the United States Army Corps of Engineers and the Federal
39 Emergency Management Agency.

1 9632. The board shall consider all of the following factors in
2 conducting its evaluation:

3 (a) The degree of risk to life and property presented by the
4 current state of local flood control efforts.

5 (b) The degree to which the facilities, projects, or plans meet
6 or fail to meet flood protection criteria established by the federal
7 government.

8 (c) The estimated costs of needed flood control maintenance
9 and improvements.

10 (d) The ability of the local public entity to raise revenues to
11 support needed flood control activities.

12 (e) The availability of sources of funding from the state or
13 federal government.

14 (f) The need for and costs of environmental compliance and
15 mitigation in connection with flood control improvements,
16 operations, and maintenance.

17 9633. The board shall conduct at least one public hearing or
18 workshop to receive comments from affected landowners, local
19 districts, and other interested parties on the subject of the board's
20 evaluation. The board may conduct additional public hearings or
21 workshops as it may deem necessary.

22 9634. Based upon the evaluation, the board shall prioritize the
23 need for supplemental flood control assistance within the
24 assessment district and shall propose appropriate time schedules
25 and an estimate of costs with regard to providing that assistance.
26 The priorities shall guide, but not be binding upon, the board.

27 9635. The board shall use the evaluation to guide it in
28 developing proposals for supplemental financial assistance to
29 local districts. Nothing in this article prevents the board from
30 proposing assistance based upon information that is not
31 contained in an evaluation prepared in accordance with this
32 article.

33 9636. (a) The board may enter into agreements with local
34 districts for specific plans of work for which supplemental
35 financial assistance may be provided, if the board finds, based
36 upon the factors described in Section 9632, that the public
37 interest in flood protection will be served thereby.

38 (b) The plans of work may be for any of the following flood
39 control activities authorized by the State Water Resources Law of
40 1945:

1 (1) Maintenance or rehabilitation of facilities or other flood
2 control works.

3 (2) Local cost-sharing for the costs of project construction.

4 (3) The performance of flood control construction or any other
5 aspect of a flood control project that is the obligation of the
6 United States, subject to an agreement with the United States that
7 it will reimburse the board, to the credit of the lands assessed or
8 charged.

9 (c) The agreement shall describe the work to be performed by
10 the local district and the funds to be contributed for that work by
11 the board. The local district shall agree to perform the specified
12 work, to operate and maintain works for which funding is
13 provided, and to hold and save the state harmless. Prior to
14 receiving assistance under this part, every local district shall
15 enter into any and all local project cooperation agreements with
16 the state required by Section 12643 or 12828.

17 9637. The board shall utilize the procedures relating to the
18 contents, submission, and approval of plans of work under the
19 delta levees subventions program set forth in Part 9 (commencing
20 with Section 12980) of Division 6, as it deems appropriate and
21 useful, to implement the flood control subventions program
22 under this article. The board shall publish the procedures it
23 adopts, subject to any modifications the board determines to
24 make.

25 9638. (a) It is the intent of the Legislature that the flood
26 control subventions program described in this article be financed
27 exclusively through the levy of assessments, fees, or charges
28 pursuant to Article 3 (commencing with Section 9640).

29 (b) It is the intent of the Legislature that the financial
30 assistance provided pursuant to this article be in addition to, and
31 not in place of, the financial assistance provided by the state for
32 the construction of flood control facilities under the State Water
33 Resources Law of 1945.

34
35 Article 3. Assessments, Fees, and Charges
36

37 9640. (a) The board may impose special benefit assessments,
38 fees, or charges, or any combination thereof as it deems
39 appropriate, upon lands within the assessment district, or any
40 zone within the assessment district.

1 (b) Any revenue generated by the imposition of an assessment,
2 fee, or charge imposed pursuant to subdivision (a) shall be
3 deposited in the Central Valley Flood Control Fund, which is
4 hereby established in the State Treasury.

5 (c) The money in the Central Valley Flood Control Fund, upon
6 appropriation by the Legislature, shall be expended by the board
7 for any of the following purposes:

8 (1) Flood control subventions to local districts within the
9 assessment district pursuant to Article 2 (commencing with
10 Section 9630).

11 (2) Reimbursement to the department for the maintenance of
12 flood control facilities pursuant to Section 8361.

13 (3) Reimbursement to the department of any unpaid costs for
14 maintenance area service provided within the assessment district
15 pursuant to Chapter 4.5 (commencing with Section 12878) of
16 Part 6 of Division 6 that is more than two years in arrears. The
17 board shall succeed to all rights of the department to collect the
18 sums paid under that Chapter 4.5 from the landowners within the
19 maintenance area.

20 (4) To pay any judgment or obligation of liability or indemnity
21 that the board incurs in connection with the implementation of
22 this part.

23 (5) To advance or loan to a local district funds that represent
24 the local, nonfederal share of financial cooperation in the
25 construction of a flood control project authorized under the State
26 Water Resources Law of 1945.

27 (6) The board's administrative costs.

28 (7) To carry out the mitigation banking program established
29 pursuant to Article 4 (commencing with Section 9650).

30 9641. The board may establish regional or local zones within
31 the assessment district within which assessments, fees, or charges
32 may be levied, as it deems necessary to ensure fairness and
33 practicality. The board, at a minimum, shall establish regional
34 zones for the Sacramento Valley, the San Joaquin Valley, and the
35 Tulare Lake Basin.

36 9642. Zones established by the board shall reflect the board's
37 identification of areas that commonly benefit from, or that
38 commonly impose a cost or burden upon, the works the board
39 financially supports, in order to establish the appropriate amount
40 of a benefit assessment, fee, or other charge upon lands therein.

9643. The county or counties in which the lands subject to an assessment, fee, or charge are located shall collect, on behalf of the board, the amount of funds to be raised pursuant to the board's imposition of assessments, fees, or charges. The board shall utilize the procedures set forth in Article 4 (commencing with Section 12878.25) of Chapter 4.5 of Part 6 of Division 6, pertaining to assessments for maintenance and operation of maintenance areas, as it deems appropriate and useful, for the purposes of determining, and certifying to the county or counties, the amount of funds to be raised for the purposes of this part. Each county collecting the assessment, fee, or charge on behalf of the assessment district may, at the same time, add to and collect from the levy an amount sufficient to cover the reasonable costs of collection incurred pursuant to this section.

9644. Assessments imposed by, and levied at the direction of, the board shall be on the basis of the use to which the benefitted land may be put, as described in Section 12878.40.

9645. The board shall adopt, by regulation, a reasonable basis or bases for imposing fees or charges to be levied under this part.

Article 4. Mitigation Banking Program

9650. The board shall establish a program of mitigation banking for its activities under this part and for the benefit of local districts in the discharge of their flood control responsibilities under this part and under the State Water Resources Law of 1945.

9651. The board, in consultation with all appropriate state, local, and federal agencies with jurisdiction over environmental protection that are authorized to regulate and impose requirements upon the flood control work performed under this part or under the State Water Resources Law of 1945, shall establish a system of mitigation banking by which mitigation credits may be acquired in advance for flood control work to be performed by the board within the assessment district or the local district.

SEC. 4. Part 7 (commencing with Section 9660) is added to the Water Code, to read:

PART 7. FLOOD INSURANCE

9660. No policy of residential property insurance may be issued or delivered or, with respect to policies in effect on the effective date of this act, initially renewed, in this state by any insurer unless the named insured is offered coverage for loss or damage by the peril of flooding for which the insured is eligible under the National Flood Insurance Act of 1966, as amended.

9661. The offer required by Section 9660 shall include the following statement:

“While it is the intention of state, federal, and local agencies responsible for flood control to provide the maximum flood protection possible, it is not widely understood that, as a practical matter, even the best flood control project cannot eliminate a small, but significant, level of risk of flooding.”

“Flood control systems are subject to forces of nature that can go beyond human control, and they involve the use of natural materials--such as the earth that is used for levees, placed upon earth--that can provide reasonable safety from failure but which cannot not guarantee perfect safety. Vigilance, monitoring, and the taking of remedial and emergency action by flood control officials is as much a necessary part of every flood control project as are the physical protective facilities themselves.”

“For this reason, it is important that citizens themselves take precautions to minimize the threat from flooding by insuring their property against the risk of damage or loss from flooding that still exists notwithstanding the best efforts of flow officials to prevent damage or loss.”

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.